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February 28, 2002

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<u>VIA ELECTRONIC FILING</u>

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Access Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers -- CC Docket No. 96-262; Notification of *ex parte* Presentation

Dear Mr. Caton:

On February 27, 2002, representatives of three Competitive Local Exchange Carriers (CLECs) serving Tier 2 and Tier 3 cities and suburban areas in North Carolina, Louisiana, Pennsylvania Illinois, Michigan and Wisconsin, provided the attached handout to Ann Monahan, Confidential Assistant to Commissioner Abernathy. The attachment was prepared by Trey Judi, Director -- Regulatory Affairs of Madison River Communications, Janet Tuzinski, Director--Regulatory and Carrier Relations of D&E Communications, Inc., James Butman, President and CEO of TDS Metrocom, and Mark Jenn, Manager – Federal Affairs of TDS Metrocom.

Very truly yours,

Holly Rachel Smith

Enclosure

cc: Ann Monahan

Company Profiles

D&E Communications, Madison River Communications and TDS Metrocom are all facilities-based competitive local exchange carriers focused on serving second and third tier markets. These companies exemplify what was envisioned in the Telecom Act of 1996. Each company was born from its ILEC parent, leveraging the knowledge and experience gained from decades of providing high quality, affordable telecommunications service to rural customers to branch out in competition with other ILECs. While all three companies have been strong and successful competitors in their chosen markets, serious challenges to their long-term growth and viability remain, including the Commission's policies on CLEC access charges.

D&E Communications (D&E)

Markets served include:
Lancaster, Lebanon, Harrisburg and York, Pennsylvania

D&E belongs to a family of integrated service providers. Almost 10,000 lines are served in competition with Verizon, Verizon North and Sprint in south-central Pennsylvania. D&E provides local, long distance, Internet, computer networking, DSL broadband, Centrex and PBX systems to small and medium-sized business customers. This is accomplished through the use of UNEs plus targeted copper and fiber overbuilds. Currently, D&E's parent is in the process of acquiring Conestoga Enterprises, a neighboring carrier that provides competitive residential and business service to about 20,000 lines in five additional Pennsylvania markets

Madison River Communications (MRC)

Markets served include:
Raleigh-Durham-Chapel Hill, NC, Baton Rouge, LA, and Peoria, IL

MRC serves just under 20,000 lines in Illinois, Louisiana, Mississippi and North Carolina. MRC has deployed four switches along with various collocation equipment and ATM edge devices. Additionally, MRC owns fiber networks on two routes, one between Atlanta and Dallas and a second that connects its two North Carolina switches with its Verizon and Bell South collocation sites. MRC uses UNEs, including EELs, as well as special access DS1s and DS3s to provide local and long distance voice and data services over these high capacity connections.

TDS Metrocom

Markets served include:
Rockford, IL, Ann Arbor and Lansing MI, and Madison and Green Bay WI,

TDS Metrocom serves over 150,000 lines in Illinois, Michigan and Wisconsin. This total includes approximately 70,000 residential lines with nearly 5,000 of those being residential DSL accounts. Metrocom serves every business and residential customer at least partly through its own facilities - no resale or UNE-P provisioning is used. Metrocom has deployed seven switches, over a hundred collocation sites, selected fiber transport facilities and limited fiber into customer premises. Metrocom provides service through the use of these facilities along with UNE loops, high capacity loops (T-1s) and interoffice transport.

Consequences of the CLEC Access Charge Order

It penalizes small and regional carriers: Small and regional CLECs do not have the scale or scope of operations necessary to price access services at rates equal to that of the RBOCs. RBOCs serving tens of millions of customers have a completely different cost structure than smaller CLECs whose costs are more similar to independent LECs that participate in the NECA pools. While the Commission notes this in its order, its rural exemption is far too limiting to provide relief for most carriers.

It damages competition in 2nd and 3rd tier markets and for residential and small business customers: Providing service in 2nd and 3rd tier markets and to residential and small business customers costs more. Lower density areas do not provide the scale economies that drive costs down and there are fewer access minutes per line generated by residential and small business customers over which to average costs. Unlike most CLECs, the RBOCs charge average rates that include huge customers and major metropolitan areas.

It devalues investment in facilities: When carriers deploy facilities, especially switches, they have real, tangible costs that need to be recovered. Fewer lines and minutes over which to average costs will cause CLEC costs to differ from those of the ILEC for a significant period of time. Investors will not fund new facilities unless CLECs can price access services in a way that recovers the cost of the facilities. Without adequate pricing, carriers will be driven towards resale and UNE-P, since those carriers need only to flow through the costs associated with purchasing ILEC unbundled switching.

It discourages CLECs from entering new markets: The FCC's "new markets rule" that limits access rates to the RBOC levels in new markets has kept CLECs from rolling out service in new areas. It ignores the fact that it takes 12-15 months to establish a facilities-based presence in a market. This resulted in carriers investing tens of millions of dollars in facilities, only to have their access rates restricted because they turned up customers a month too late.

It frees IXCs to ignore CLEC attempts to negotiate access agreements: Large IXCs continue to hold both CLECs and customers wishing to switch carriers hostage by demanding access rates equal to ILEC rates, withholding payment of access charges and threatening to block traffic. Smaller CLECs have no power whatsoever to compel IXCs to even respond to requests for negotiation.

What Should be Done?

Act on TDS Metrocom's Petition for Reconsideration to adopt rules that allow adequate rates for carriers serving smaller markets and those serving residential and small business customers to recover the higher costs serving these markets, rather than large LEC averaged rates.

Alter the definition of a rural CLEC to make it correspond more closely to the definition of a rural ILEC contained in the Telecom Act to allow more CLECs to qualify for the rural CLEC exemption.

At a minimum, modify the annual reductions in the rate caps to correspond to those proposed in the original ALTS "GREAT Proposal".

Eliminate the anti-competitive "New Markets Rule" to encourage deployment of new facilities.

Clearly define the duties of IXCs to negotiate in good faith with CLECs regarding access charges and provide a means for carriers to quickly arbitrate disputes or resolve complaints.

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